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. 8	Attorneys for Complainant
9	BEFORE THE
10	CALIFORNIA BOARD OF OCCUPATIONAL THERAPY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
11	
12	In the Matter of the Accusation Against: Case No. OA2008-77
13	DONALD FELIPE HARRIS OAH No.
14	17050 San Bruno Street, Apt. E11 Fountain Valley, CA 92708 ACCUSATION
15	Occupational Therapy Assistant Certificate
16	No. OTA 1772
17	Respondent.
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19	Complainant alleges:
20	PARTIES
21	1. Heather Martin (Complainant) brings this Accusation solely in her official
22	capacity as the Executive Officer of the California Board of Occupational Therapy, Department
23	of Consumer Affairs.
24	2. On or about May 20, 2008, the California Board of Occupational Therapy
25	issued Occupational Therapy Assistant Number OTA 1772 to Donald Felipe Harris
20	(Respondent). The Occupational Therapy Assistant was in full force and effect at all times
2′	relevant to the charges brought herein and will expire on May 31, 2011, unless renewed.
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JURISDICTION

- 3. This Accusation is brought before the California Board of Occupational Therapy (Board), Department of Consumer Affairs, under the authority of the following laws.

 All section references are to the Business and Professions Code unless otherwise indicated.
 - 4. Section 2570.27, of the Code states:
 - (a) The board may discipline a licensee by any or a combination of the following methods:
 - (1) Placing the license on probation with terms and conditions.
 - (2) Suspending the license and the right to practice occupational therapy for a period not to exceed one year.
 - (3) Revoking the license.
 - (4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.
 - (5) Taking other action as the board, in its discretion, deems proper.
 - (b) The board may issue an initial license on probation, with specific terms and conditions, to any applicant who has violated any provision of this chapter or the regulations adopted pursuant to it, but who has met all other requirements for licensure.
- 5. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY AUTHORITY

6. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug program assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

7. Section 2570.28 states:

The board may deny or discipline a licensee for any of the following:

(a) Unprofessional conduct, including, but not limited to, the following:

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(h) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a licensee.

8. Section 2570.29 states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

- (a) Obtain or possess in violation of law, or prescribe, or, except as directed by a licensed physician and surgeon, dentist, optometrist, or podiatrist, to administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.
- 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Possession of a Controlled Substance)

- 10. Respondent's license is subject to discipline for unprofessional conduct under sections 2570.28(a) and 2570.29(a) in that he possessed a controlled substance in violation of the law. The circumstances are that on or about September 16, 2008, in the City of Long Beach, the police were dispatched to the parking lot at Walgreens regarding a male waiting by his vehicle to purchase drugs. When police made contact with Respondent, Respondent stated that he had a problem with drugs and that he had come to the parking lot to buy heroin. Upon a search of Respondent's vehicle, police found a bindle that contained heroin. Respondent was arrested for having a controlled substance in his possession.
- a. On or about October 17, 2008, in the proceeding entitled *People vs.*Donald Felipe Harris, Los Angeles County Superior Court, Case Number NA079690,

 Respondent pled guilty to possession of a narcotic controlled substance (heroin) in violation of Health and Safety Code section 11350(a), a felony. The entry of judgment was deferred for 18

months pursuant to Penal Code section 1000 and Respondent was ordered to enroll in a diversion program. Upon successful completion of the diversion program, Respondent's guilty plea will be withdrawn and the charges against Respondent will be dismissed.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Committing a Corrupt Act)

11. Respondent's license is subject to discipline for unprofessional conduct under section 2570.28(h) in that he committed a corrupt act that is substantially related to the qualifications, functions, or duties of a licensee when he bought and possessed heroin, a controlled substance, in violation of the law. The circumstances are more specifically set forth in paragraph 10 above, which are realleged and incorporated herein by reference.

DISCIPLINE CONSIDERATIONS

- Respondent, Complainant alleges that on or about January 16, 2002, in a prior criminal proceeding entitled *People v. Donald Felipe Harris* in Long Beach Superior Court, Case Number 1LL05237, Respondent pled nolo contendere to violating Vehicle Code section 23152(A) (driving while under the influence), a misdemeanor. Respondent was sentenced to three years summary probation, ordered to pay fines and restitution, to perform 9 days of community service and to successfully complete a 3-month alcohol and drug education program. The record of the criminal proceeding is incorporated herein as if fully set forth.
- Respondent, Complainant alleges that on or about June 7, 1995, in a prior criminal proceeding entitled *People v. Donald Felipe Harris* in the Santa Ana Superior Court, Respondent was convicted for possession of a controlled substance and ordered to attend a diversion program. The record of the criminal proceeding is incorporated as if fully set forth.
- 14. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about November 17, 1984, in a prior criminal proceeding entitled *People v. Donald Felipe Harris* in the San Bernardino Superior Court, Respondent was convicted for driving under the influence of alcohol and was sentenced to two

1	days in jail, fined and ordered to attend traffic school. The record of the criminal proceeding is
2	incorporated as if fully set forth.
3	<u>PRAYER</u>
4	WHEREFORE, Complainant requests that a hearing be held on the matters herein
5	alleged, and that following the hearing, the California Board of Occupational Therapy issue a
6	decision:
7	A. Revoking or suspending Occupational Therapy Assistant Certificate
8	Number OTA 1772, issued to Donald Felipe Harris;
9	B. Ordering Donald Felipe Harris to pay the California Board of
10	Occupational Therapy the reasonable costs of the investigation and enforcement of this case,
11	pursuant to Business and Professions Code section 125.3; and
12	C. Taking such other and further action as deemed necessary and proper.
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14	DATED: flace 4, 2009
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17	HEATHER MARTIN
18	Executive Officer California Board of Occupational Therapy
19	Department of Consumer Affairs State of California
20	Complainant
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